

STATE OF MICHIGAN
COURT OF APPEALS

BURNS ROLLAND, DORIS ROLLAND,
BURNS ROLLAND, JR., and TERESA
ROLLAND,

Plaintiffs-Appellants,

v

INTERNATIONAL TRANSMISSION
COMPANY,

Defendant-Appellee.

INTERNATIONAL TRANSMISSION
COMPANY,

Plaintiff/Counterdefendant-
Appellee,

v

PINE VIEW ESTATES SUBDIVISION
ASSOCIATION,

Defendant/Counterplaintiff,

and

GEORGETOWN COMMUNITIES
DEVELOPMENT, L.L.C., d/b/a RIVER RIDGE
MANUFACTURED HOME COMMUNITY,
BURNS ROLLAND, SR., and BURNS
ROLLAND, JR.,

Defendants-Appellants.

Before: Gleicher, P.J., and O'Connell and Kelly, JJ.

UNPUBLISHED
May 13, 2008

No. 274411
Lapeer Circuit Court
LC No. 04-034624-CH

No. 274413
Lapeer Circuit Court
LC No. 04-034627-CH

PER CURIAM.

These consolidated cases arise from a dispute regarding the scope of electrical power line easements. In Docket No. 274411, plaintiff landowners appeal as of right a declaratory judgment and permanent injunction granted to defendant International Transmission Company (ITC). In Docket No. 274413, defendant landowners appeal as of right the identical declaratory judgment and permanent injunction.¹ We affirm.

I. Facts and Proceedings

In the late 1940's and early 1950's, the Detroit Edison Company acquired easement rights to "construct, operate and maintain" electrical power lines, "including the necessary H-frames, towers, fixtures, wires and equipment," on properties owned by the landowners' or their predecessors in interest. In 2000, Detroit Edison assigned these tower line easement rights to ITC.

In July 2004, ITC commenced the Thumb Loop Project, an upgrade of 35.2 miles of electrical transmission lines located on approximately 240 individual properties. The project called for the replacement of wooden H-frame poles with single steel poles, known as monopoles. The Thumb Loop Project also contemplated the installation of new wires to increase the available capacity of the power lines.

ITC notified the involved landowners of its intent to enter their properties to perform the work required for completion of the Thumb Loop Project. When several landowners in Lapeer County objected, ITC sought a declaratory judgment that the planned work would not exceed the scope of its easements, and additionally requested preliminary and permanent injunctions permitting it to access the properties. The landowners responded by filing a complaint seeking a contrary declaratory judgment and an injunction prohibiting any power line or pole upgrade work on their land.

In May 2005, after conducting a preliminary injunction hearing, the circuit court entered a preliminary injunction in favor of ITC. The preliminary injunction permitted ITC to engage in "the reconstruction of the . . . 'Thumb Loop Project' . . . within the established right-of-way," and enjoined the landowners from denying ITC access to their properties. This Court denied the landowners' application for leave to appeal the preliminary injunction ruling.² ITC subsequently completed the Thumb Loop Project, and filed a motion seeking a permanent injunction and summary disposition of the landowners' remaining claims pursuant to MCR 2.116(C)(10). On October 25, 2006, the circuit court granted ITC summary disposition and entered a "Declaratory judgment and final order for permanent injunction" in favor of ITC. The landowners now appeal that order.

¹ For ease of reference, we will refer to the parties as the landowners and ITC.

² *Int'l Transmission Co v Pine View Estates Subdivision Ass'n*, unpublished order of the Court of Appeals, entered August 16, 2005 (Docket No. 263447).

II. Issues Presented and Analysis

The landowners contend that the circuit court improperly granted summary disposition and issued a declaratory judgment in favor of ITC, because the installation of steel monopoles and new power lines expanded the scope of the express easements and materially increased the burden on their servient estates. This Court reviews de novo a trial court's summary disposition ruling in a declaratory judgment action. *Dobie v Morrison*, 227 Mich App 536, 538; 575 NW2d 817 (1998). "The extent of a party's rights under an easement is a question of fact, and a trial court's determination of those facts is reviewed for clear error." *Blackhawk Dev Corp v Village of Dexter*, 473 Mich 33, 40; 700 NW2d 364 (2005). This Court reviews "a trial court's grant of injunctive relief for an abuse of discretion." *Michigan Coalition of State Employee Unions v Civil Service Comm*, 465 Mich 212, 217; 634 NW2d 692 (2001).

The landowners contend that the express terms of the easements allowed ITC to "construct, operate and maintain" the wooden H-frames, but did not permit ITC to remove and replace the old wooden structures with steel monopoles. The landowners reason that because monopoles did not exist when the landowners or their predecessors in interest executed the line permits, they could not have expressly agreed to the construction of these structures. Furthermore, the landowners contend, ITC's pre-suit effort to persuade the landowners to sign "clarification agreements" permitting ITC to "remove, replace and/or reconstruct" the towers demonstrates that the original easement language did not encompass the introduction of steel monopoles.

The rights of an easement holder are defined by the easement agreement. *Thies v Howland*, 424 Mich 282, 297; 380 NW2d 463 (1985). "Where the language of a legal instrument is plain and unambiguous, it is to be enforced as written and no further inquiry is permitted." *Little v Kin*, 468 Mich 699, 700; 664 NW2d 749 (2003). The easements at issue share identical language granting the Detroit Edison Company and its successors

the right to construct, operate and maintain its lines for the transmission and distribution of electricity and Company communication facilities, including the necessary H-frames, towers, fixtures, wires and equipment ... over and across [the] property.

The circuit court determined that this language comprehended the replacement of wooden H-frames with steel monopoles, and we agree. The easements clearly and unambiguously afford ITC with the right to "construct ... necessary ... towers, fixtures, wires and equipment." The steel monopoles and high voltage wires that comprise the Thumb Loop Project constitute "necessary ... towers ... wires and equipment." Because the easements expressly and plainly provide for the upgrades involved in the Thumb Loop Project, we find as a matter of law that these upgrades did not increase the burden on the landowners' estates. *Great Lakes Gas Transmission Co v MacDonald*, 193 Mich App 571, 577-578; 485 NW2d 129 (1992). We conclude that the circuit court correctly determined that the work contemplated by the Thumb Loop Project upgrades did not violate the express easements.

Contrary to the landowners' contention, the fact that steel monopoles did not exist when they and their predecessors executed the tower line permits does not alter our conclusion. In *Detroit Edison Co v Zoner*, 12 Mich App 612, 620; 163 NW2d 496 (1968), this Court examined

an agreement conveying to Detroit Edison “the right to construct, operate and maintain its lines for transmission and distribution of electricity and company communication facilities, including the necessary towers, fixtures, wires and equipment,” on a 200-foot wide strip of land on the defendants’ property. This Court rejected the defendants’ argument that the erection of towers approximately 50% higher than average, together with supporting lines carrying considerably more voltage, improperly increased the burden of the easement. *Id.* at 617-620. We explained,

The easement grant clearly allowed the construction of a high-power line. Technical aspects of the transmission line were not denoted in the contracts, nor would we have expected as much. Science and technology do not stand still. Reasonable men would expect some change in tower design, capacity, or material composition in the span of a decade. The law does not require the cessation of scientific advancement ...” [*Id.* at 617-618.]

Similarly, in *Schumacher v Dep’t of Natural Resources*, 256 Mich App 103, 107; 663 NW2d 921 (2003), this Court quoted with approval from 1 Restatement Property, Servitudes, 3d, § 4.10, which provides in relevant part as follows:

(T)he holder of an easement ... is entitled to use the servient estate in a manner that is reasonably necessary for the convenient enjoyment of the servitude. The manner, frequency, and intensity of the use may change over time to take advantage of developments in technology and to accommodate normal development of the dominant estate

Although *Schumacher* involved the scope of an easement by necessity, it supports the circuit court’s conclusion that the Thumb Loop Project’s technological upgrades fell within the scope of the express easements here.

We also reject the landowners’ argument that absent the easements’ inclusion of the word “reconstruct,” the installation of steel monopoles exceeded the easements’ scope. As noted above, the analysis in *Schumacher* contemplates that ITC could “take advantage” of technological advances permitting improved electrical service. We also observed in *Mumrow v Riddle*, 67 Mich App 693, 699; 242 NW2d 489 (1976), that the holder of easement rights may make necessary changes supporting the effective enjoyment of an easement, unless the burden on the servient estate unreasonably increases. *Mumrow* adopted a two-part balancing test: (1) whether the repair or improvement is necessary for effective enjoyment of the easement, and (2) whether any necessary repair or improvement unreasonably increases the burden on the land. *Id.* at 700.

Here, the monopoles are necessary replacements for antiquated and deteriorating wooden H-frames. Increased electrical demand mandated a system upgrade of the Thumb Loop area. The improvements necessary to facilitate the delivery of increased electrical service and the need for easier maintenance of the lines could be accomplished with steel monopoles, but not with H-frames. The upgrade-necessitated changes remain entirely consistent with the easements’ purpose, the “transmission and distribution of electricity.” Further, the hearing evidence demonstrated that although the monopoles are approximately 40 feet higher than the H-frames, they require less than half the width of the wooden structures. In light of the landowners’ failure to prove any increased burden on their properties, the circuit court’s decision to grant summary

disposition, a declaratory judgment, and permanent injunctive relief in ITC's favor does not constitute an abuse of discretion.

Affirmed.

/s/ Elizabeth L. Gleicher

/s/ Peter D. O'Connell

/s/ Kirsten Frank Kelly